

REMARKS

Upon entry of the claim amendments, claims 1, 3 and 5 are all the claims pending in the application. Claims 2, 4 and 6-15 are canceled, and claim 3 has been amended to delete its dependency from canceled claim 2.

Claim 1 has been amended to recite specific ascorbic acid analogs and additional steps of treating said protein material and optional secondary material, cooling, and obtaining a food material. Support for the claim 1 amendment can be found throughout the specification and originally filed claims, especially at least at page 1, lines 18-20, page 8, lines 1-14, page 10, lines 5-23, page 17, lines 6-20 and in original claim 2.

Accordingly, no new matter has been introduced by these amendments to claims.

I. Preliminary Matters

Applicants thank the Examiner for returning a signed and initialed copy of the PTO Form SB/08 that accompanied the Information Disclosure Statement filed July 1, 2009.

However, in the Office Action, the Examiner indicates that EP Application No. 1180333 was not considered because an English language translation of the abstract or of another relevant portion of the reference was not submitted along with the IDS.

Applicants respectfully disagree and submit that the IDS was proper and all references should have been considered. Specifically, 37 CFR 1.98 requires that only a concise explanation of relevance of foreign language documents be provided. Further, MPEP 609.04(a)(III) states that where a reference is cited in a search report by a foreign patent office in a counterpart foreign application, the requirement for a concise explanation of relevance can be satisfied by

submitting an English-language version of the search report which indicates the degree of relevance found by the foreign patent office. In this case, since the EP Application was cited in a supplemental European search report that was submitted with the IDS, the requirement for a concise explanation of relevance was met.

Accordingly, Applicants respectfully request that the Examiner return a copy of the previously submitted SB/08 indicating consideration of EP Application No. 1180333.

II. Present Claims Comply With 35 U.S.C. § 112

1. Claims 1-9 are rejected under 35 U.S.C. § 112, first paragraph, as allegedly failing to comply with the written description requirement. Specifically, the Examiner asserts that, while the specification discloses the ascorbic acid analog is present in an amount of 0.01-3% or in an amount of 0.05-1%, there is no support to recite that a “composition consisting of” ascorbic acid analog is present in a “deodorizing effective amount.”

Without agreeing with the Examiner, and solely to expedite the prosecution, Applicants have amended claim 1 to delete the phrase, “deodorizing effective amount.”

2. Claims 1-9 are rejected under 35 U.S.C. § 112, second paragraph, as allegedly being indefinite.

i) Regarding claims 1 and 6, the Examiner asserts that the terms, “adding a deodorizing effective amount of a composition” and “treatment at a high temperature under elevated pressure,” are indefinite since they do not give a specific amount or a specific temperature or pressure.

Further, with respect to the term, “a deodorizing effective amount of a composition that consists of an ascorbic acid analog in the production of a food material obtainable by subjecting a protein material,” the Examiner states that what is being obtained is unclear.

Without agreeing with the Examiner, and solely to expedite the prosecution, Applicants have amended claim 1 to delete the phrase, “deodorizing effective amount.”

With respect to the phrase, “treatment at a high temperature under elevated pressure,” Applicants respectfully disagree with the Examiner in that this term is definite in view of the present specification. Specifically, the present specification clearly states, “[a]ccording to the invention, the treatment at a high temperature under elevated pressure means a treatment at 110°C or more under 1 atmospheric pressure or more.” Page 1, lines 18-20. Accordingly, upon reading the specification, one of ordinary skill in the art would understand that the “a high temperature under elevated pressure” means “110°C or more under 1 atmospheric pressure or more.” Nonetheless, solely to expedite the prosecution, Applicants have amended claim 1 to recite the specific temperature, “from 110 to 200 degree C.”

Moreover, Applicants have amended claim 1 to recite an additional step of “obtaining a food material,” specifying what is being obtained.

ii) Regarding claims 4 and 6-9, the Examiner contends that it is not clear what is meant by “fibrous texture.”

Regarding claims 1, 3, 4, 6, and 8, the Examiner also contends that the terms “high temperature” and “elevated pressure” are relative terms which renders the claims indefinite.

Without agreeing with the Examiner, and solely to expedite the prosecution, Applicants have canceled claims 4 and 6-9.

With respect to the terms, “a high temperature” and “elevated pressure,” as discussed above, Applicants respectfully disagree with the Examiner in that these terms are definite in view of the present specification. Nonetheless, solely to expedite the prosecution, Applicants have amended claim 1 to recite the specific temperature, “from 110 to 200 degree C.”

Accordingly, Applicants respectfully request that the above rejections under 35 U.S.C. § 112 be reconsidered and withdrawn.

III. Present Claims Are Patentable Over Hamai and Madono

1. Claims 1-9 are rejected under 35 U.S.C. 102(b) as allegedly being anticipated by Hamai et al. (JP 2941416; “Hamai”).

Applicants have canceled claims 2, 4 and 6-9 and amended claim 1 solely to expedite the prosecution. Applicants assert that the current amendments render moot all outstanding claim rejections, because the cited art fails to disclose each and every element of the presently claimed invention.

As pointed out in M.P.E.P. § 2131, “[t]o anticipate a claim, the reference must teach every element of the claim.” Thus, “[a] claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference. *Verdegaal Bros. v. Union Oil Co. Of California*, 2 USPQ 2d 1051, 1053 (Fed. Cir. 1987).” Applicants respectfully assert that the Office Action failed to provide a prior art reference that teaches every element as set forth in the amended claim.

Independent claim 1, as amended, recites:

adding ascorbic acid, isoascorbic acid, or dihydroascorbic acid, or salts or esters thereof to a protein material and an optional secondary material, treating said protein material and optional secondary material at a high temperature under elevated pressure until the temperature thereof rises to from 110 to 200 degree C, ... and obtaining a food material.

Applicants respectfully assert that Hamai fails to disclose adding ascorbic acid prior to treating at a high temperature under elevated pressure or obtaining a food material.

Specifically, in Hanmai, a structured compound (a food material) is i) obtained after exposing fish-meat to high temperature and high pressure, ii) is frozen, and then iii) is heated in a solution containing an oxidizing agent or a reducing agent. Page 7, lines 10-13, and page 8, lines 16-21 of the full translation of Hanmai, attached herein¹. Thus, Hamai does not teach adding the ascorbic acid analogue to the food material prior to treating at the heat and pressure treatment or obtaining a food material. Rather, Hamai teach that the food material must be first treated at high temperature and pressure and then the treated material secondarily may be subjected to treatment with an oxidizing or reducing agent.

Since the rest of the pending claims are dependent upon claim 1, Applicants submit that the rest of the pending claims are patentable at least by virtue of their dependency.

Accordingly, Applicants respectfully request that the above rejection under 35 U.S.C. § 102 be reconsidered and withdrawn.

2. Claims 1 and 2 are rejected under 35 U.S.C. 102(b) as allegedly being anticipated by Madono et al. (JP 10-042841; “Madono”).

¹ In accordance with M.P.E.P. § 609.05(c), the document cited herein in support of Applicants' remarks is being submitted as evidence directed to an issue raised in the Official Action, and no fee pursuant to 37 C.F.R. 1.97 or 1.98, or citation on a FORM PTO/SB/08A & B is believed to be necessary.

Madono discloses adding vitamin C (L-ascorbic acid or its salt) to vegetables to control the sulfurous odor during or after beating the vegetables. See Paragraphs [0006]-[0008] and [0015]. The Examiner asserts that it is inherent that beating the product will produce “elevated pressure” as recited in present claims.

Initially, Applicants respectfully point out that the mechanical translation of Madono’s Detailed Description of the Invention contains an incorrect translation of the Japanese word, “細断,” as “beating,” instead of “chopping” as correctly translated in line 3 of its Abstract as shown below.

(54) PRODUCTION OF VEGETABLE JUICE

(57)Abstract:

PROBLEM TO BE SOLVED: To provide a manufacturing method of vegetable juice having a lowered discomfort sulfurous odor distinctive for vegetables of brassicaceous.
SOLUTION: Vegetables (cabbage, etc.) belonging to Brassicaceae is chopped into fragments having 10-100mm of diameter, and 50-500mg of Vitamine C per 100gr of fragments is added in the chopping time or after chopping. This fragments is heat treated, squeezed juice out of heat treated fragments. The squeezed vegetable juice is the concentrated to afford the vegetable juice.

In fact, Madono discloses using a cutter to make a “beating thing” with a diameter of 20mm. Paragraph [0029]. Accordingly, Madono discloses only chopping of its vegetables, not beating.

In view of the correct translation, Applicants respectfully submit that one of ordinary skill in the art would understand that Madono’s step of chopping vegetables would not cause the vegetables to be “under elevated pressure” as recited in present claims.

Accordingly, Applicants respectfully request that the above rejection under 35 U.S.C. § 102 be reconsidered and withdrawn.

IV. Conclusion

In view of the above, reconsideration and allowance of this application are now believed to be in order, and such actions are hereby solicited. If any points remain in issue which the Examiner feels may be best resolved through a personal or telephone interview, the Examiner is kindly requested to contact the undersigned at the telephone number listed below.

The USPTO is directed and authorized to charge all required fees, except for the Issue Fee and the Publication Fee, to Deposit Account No. 19-4880. Please also credit any overpayments to said Deposit Account.

Respectfully submitted,

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